

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOEL CARTER,

Plaintiff,

Case No. 08-11862

v.

Honorable Patrick J. Duggan

WEIDMAN, MEYHOFER, SMITH,  
TIPTON, BABCOCK, R. HUGHES,  
BONNON, D. HUGHES, DAVIS, WINN,  
ALEXANDER, STEVESON, BIRKETT,  
TIM BLAIN, ANDY CHARBONNEAU,  
STEVE BELLOWS, STACY KOCOT, and  
RICHARD COLAMARINO,

Defendants.

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**OPINION AND ORDER**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
of Michigan, on June 22, 2009.

PRESENT: THE HONORABLE PATRICK J. DUGGAN  
U.S. DISTRICT COURT JUDGE

Joel Carter (“Plaintiff”), a state prisoner, filed this civil action against defendants pursuant to 42 U.S.C. § 1983 on May 1, 2008. In his complaint, Plaintiff alleges that defendants—correctional officers and other employees of the Michigan Department of Corrections—violated his constitutional right to be free from cruel and unusual punishment and excessive force, denied him a protected liberty interest without due process of law, conducted an illegal search, committed an assault and battery under Michigan law, and

engaged in a conspiracy to deny him his constitutional rights.<sup>1</sup> On September 8, 2008, this Court referred all pre-trial matters in this case to Magistrate Judge Mona K. Majzoub.

On March 30, 2009, Magistrate Judge Majzoub ordered Plaintiff to provide further identifying information—specifically the full name—of Defendant Davis by April 20, 2009. U.S. Marshals had attempted service on Davis but discovered that there were multiple correctional officers with that surname. Plaintiff failed to respond to the order and the 120-day time limit for service has expired. *See* Fed. R. Civ. P. 4(m).

On May 28, 2009, Magistrate Judge Majzoub issued a Report and Recommendation (R&R) recommending that this Court dismiss Defendant Davis from the lawsuit without prejudice. At the conclusion of the R&R, Magistrate Judge Majzoub advises the parties that they may object to and seek review of the R&R within ten days of service upon them. (R&R at 2.) She further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right of appeal.” (*Id.*) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Majzoub.

Accordingly,

**IT IS ORDERED** that Defendant Davis is **DISMISSED WITHOUT PREJUDICE**.

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<sup>1</sup>Pursuant to this Court’s prior Opinion and Order dated May 4, 2009, Defendants Weidman, Smith, Tipton, Babcock, R. Hughes, Bonnon, D. Hughes, Alexander, and Birkett have been dismissed from the case.

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

Copies to:  
Joel Carter  
#410324  
Marquette Branch Prison  
1960 U.S. Hwy 41 South  
Marquette, Michigan 49855

Clifton Schneider, Esq.